

REMARKS/ARGUMENTS

Claims 1, 2, 5, 6, 9-19, 26-29, 31, 32, 53, and 55-57 are pending. Applicant notes with appreciation that the pending claims are apparently allowable over the prior art, thus leaving only an issue with an information disclosure statement and a double patenting rejection.

Information Disclosure Statement

The Office Action states that references "CK, CL, CM, JU, JV, JW, JX, JY, JZ, and KA" from the Information Disclosure Statement ("IDS") filed August 3, 2000, have not been considered.

Regarding the references that are patent applications, the Office Action notes that Applicants rely on 37 CFR §1.98(a)(2)(iii). However, the Office Action inexplicably quotes the most recent version of CFR §1.98 in analyzing the issue. It seems clear that the pertinent version of the rule should be *the version that was in force when the IDS was filed in 2000*, which states:

§ 1.98 Content of information disclosure statement.

(a) Any information disclosure statement filed under §1.97 shall include:

(1) A list of all patents, publications, or other information submitted for consideration by the Office;

(2) A legible copy of :

(i) Each U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed;
and

(iii) All other information or that portion which caused it to be listed, **except that no copy of a U.S. patent application need be included**; and

37 CFR §1.98 (2000) (emphasis added); *See* Appendix R of the MPEP, Seventh Edition, First Revision (2/2000). Under this version, it is explicit that no copy of a U.S. patent application

DOCKET NO.: ISIS-4390
Application No.: 09/594,387
Office Action Dated: August 13, 2003

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116


need be included. Thus, Applicant complied with the applicable rule when the IDS was filed, and is entitled to have the Examiner consider the references JU, JV, JW, JX, JY, JZ, and KA.

Double Patenting

The Examiner has rejected the claims over the Applicant's copending application, Serial No. 09/334,130 under the doctrine of obviousness-type double patenting. Without commenting on the appropriateness of the rejection, Applicant submits herewith a terminal disclaimer, thereby overcoming the rejection.

Applicant submits that the claims are now in condition for allowance. Accordingly, an early and favorable Notice of Allowance is respectfully requested.

Date: *October 8, 2003*



Brian J. Hubbard
Registration No. 45,873

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 557-5997
Facsimile: (215) 568-3439

218274